

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 24-CV-80702-ROSENBERG

RICHARD MAROUS,

Plaintiff,

v.

NOW OPTICS HOLDINGS, LLC,

Defendant.

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ORDER DENYING THE DEFENDANT’S MOTION TO DISMISS

THIS CAUSE is before the Court on the Defendant’s Motion to Dismiss at docket entry 27. The Plaintiff filed a response at docket entry 28. For the reasons set forth below, the Motion is denied.

The Plaintiff initiated this suit under the Telephone Consumer Protection Act, or TCPA. DE 1. For a claim to be cognizable under the TCPA, the Plaintiff must allege that he received a text message that was a solicitation. *See* 47 C.F.R. § 64.1200(c). The Defendant has filed the Motion to Dismiss before the Court on the premise that the Plaintiff has not adequately pled that he received a text message solicitation. Instead, the Defendant characterizes the text messages the Plaintiff received as “informative” only. DE 27 at 1-2.


For support for its argument, the Defendant cites to the following text message that is contained in the Plaintiff’s Amended Complaint: “Stanton Optical: Time is running out! Independent eye doctors are available. Schedule your overdue eye exam NOW: <https://w.ems.to>.” DE 22 at 4. The Amended Complaint also alleges that the Plaintiff received the following text

message: “My Eyelab is now Stanton-Optical, its sister brand under the same company. Book your eye exam today: <https://w.ems.to/EPaZjm4>.” *Id.*

The Court is required to view all allegations in the Amended Complaint in the light most favorable to the Plaintiff. *E.g., Scheuer v. Rhodes*, 416 U.S. 232 (1974). Viewed in that light, the alleged text messages serve a dual purpose—they inform, but they also solicit the provision of eye examination services. Dual purpose messages that include a solicitation are prohibited under the TCPA. *Chesbro v. Best Buy Stores, LP*, 705 F.3d 913, 917 (2012). The Defendant’s Motion to Dismiss is **DENIED** and the Defendant shall file an answer within ten days of the date of rendition of this Order.

DONE AND ORDERED in Chambers, West Palm Beach, Florida, this 20th day of August, 2024.

Copies furnished to:
Counsel of record


ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE